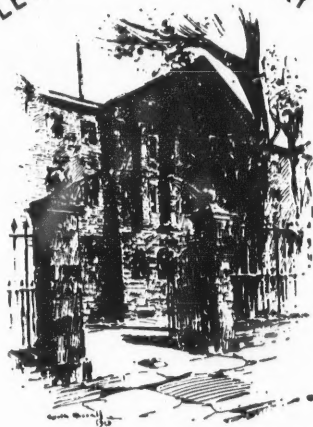


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IN THE SUPREME COURT, 1881.

CAUSE— { GEORGE H. SMITH, Plaintiff.
 { vs.
 { JOSEPH BELL, Defendant.

APPEAL FROM COUNTY COURT.

FRED. J. TREMAINE, - - - Appellant.
THOMPSON & GRAHAM, - - Appellees.

ROBERT McCONNELL, PRINTER, TRURO, N. S.

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IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM J. BENTLEY, PETITIONER,

VERSUS
THE UNITED STATES OF AMERICA, RESPONDENT.

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IN THE COUNTY COURT, 1881.

HALIFAX, SS.

Cause— { GEORGE H. SMITH, Plaintiff.
 vs.
 JOSEPH BELL, De'endant.

The Plaintiff herein appeals from my judgment given herein for the defendant on the 18th day of July, A. D., 1881, and said appeal having been perfected to my satisfaction, I certify to the Supreme Court the appeal papers following :

- The order for appeal marked No. 1.
- The minutes of evidence taken at the trial Marked No. 2. 10
- The judgment given by me herein marked No. 3.
- The Writ of Summons herein and notices thereon marked No. 4.
- The appearance and Pleas marked No. 5.
- The Exhibits put in on the trial, viz :
- Exhibit "A., J. W. J.," Bill of Sale with schedule.
- " "B., J. W. J.," Memo. of goods levied by Sheriff.
- " "C., J. W. J.," Abstract from deed Young *et al* to Smith.
- " "A." Frothonotary's docket of Judgment in Morrison *vs.* Smith.
- " "F." Memo. of agreement. 20
- " "F." Record in Morrison *vs.* Smith.
- " "G." Execution in Morrison *vs.* Smith.
- " "I." Account Sales, J. Shand.
- " "L." Writ of Summons in the suit Morrison *vs.* Smith.
- " "M." Præcipe for Summons, Morrison *vs.* Smith.
- " "N." Bill of Costs in Morrison *vs.* Smith.
- " "O." Record (abstract) Horley *vs.* Smith.
- " "P." Order for discharge, G. McKenzie.

Given under my hand this 16th day of Sept. A. D., 1881.

J. W. JOHNSTON.

No. 1.

COUNTY COURT, 1881.

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HALIFAX, SS.

Cause— { GEORGE H. SMITH, Plaintiff.
 vs.
 JOSEPH BELL, Defendant.

On motion it is ordered, That the Plaintiff have leave to appeal, and an appeal is hereby granted to the Supreme Court from the judgment of the Judge of this Court, given in this cause in favor of the defendant on the 18th day of July, instant, upon the following grounds :

- 1st, Because the judgment is against the law and evidence taken herein.
- 2nd, Because the said judgment is against the weight of evidence.
- 3rd, Because the learned judge improperly received evidence on the trial of this cause. 40
- 4th, Because the learned judge improperly rejected evidence on the trial of this cause.
- 5th, Because the defendant was allowed to go into the question of fraud in regard



to the Bill of Sale put in evidence by the Plaintiff, without any plea of fraud being on the record.

6th, Because the learned judge received and admitted evidence of a judgment in the suit of Morrison *vs.* Smith, the same not having been properly proved.

7th, Because the learned Judge improperly received in evidence an Execution issued in the suit of Morrison *vs.* Smith, said Execution being issued on a judgment which was not properly or legally proved.

8th, Because the record in the suit Morrison *vs.* Smith, received in evidence, was incomplete and improperly received, and was not the record of the judgment pleaded in this cause. 50

9th, Because the Record received in evidence and the judgment in the Prothonotary's judgment book, put in evidence by the defendant, are inconsistent.

10th, Because the execution in the suit Morrison *vs.* Smith, received in evidence by the learned Judge, was improperly received.

11th, Because there is no evidence that the officer levying under the execution had the writ, or warrant, in his possession at the time of levying.

And on the grounds taken and argued on the trial, and also because the said execution was never returned into the said County Court. 60

Dated at Halifax, this 16th day of September, A. D. 1881.

BY THE COURT,

J. PARSONS,
Clerk.

On motion of Mr. Tremaine }
for Plaintiff. }

No. 2.

July 13, 1881.

GEO. H. SMITH *vs.* JOSEPH BELL.

GEO. H. SMITH, Plaintiff.—Received bill of sale from W. H. Smith of property. W. H. Smith's signature is to bill of sale. I was in possession of articles mentioned in bill of sale. Some of the articles mentioned in bill of sale taken out of my possession by the sheriff Bell, by Hamilton his deputy. Bill of sale tendered. 70

Cross examined as to Bill of Sale.—Body in my handwriting. My sister witness to bill of sale. I was present. Witness and William H. Smith, my father and Mrs. Smith, my mother, were present at the execution. I filed document myself 9th July, 1880. Bill of sale executed September, 1879.

A—Bill of sale received. A., J. W. J.

Smith stands aside to examine Sheriff Bell.

SHERIFF BELL.—Hamilton my deputy. The property I took was on the premises that had been occupied by William H. Smith, baker. Memo. B contains the articles taken by me and the price I got for the articles.

B---B tendered and received.

Cross examined.—Execution against Wm. H. Smith. He carried on business on the premises for some years. About the time of getting writ of summons or execution. I heard W. H. Smith had left the country. All my knowledge of levy and execution is from my deputy. I received the proceeds myself. 80

GEO. H. SMITH, *examination resumed.*—The articles taken by sheriff were included in bill of sale. The deputy sheriff, Clarence Hamilton, on morning of sale in August, 1880, came to the house, and when articles were offered for sale, by Shand, for myself, protested against sale taking place. I instructed auctioneer to proceed with sale. Deputy Sheriff took them out of possession of auctioneer. He interfered with the delivery of the articles, after goods had been sold. Time of redemption mentioned in bill of sale had not expired by a month or two, at time of sale. The grantor, Wm. H. Smith, consented to my making sale. Horse Harry produced at sale \$35. Mare \$37. I was at sale. Deputy protested against sale as each article was put up; Horse Harry worth \$40, as also the mare. 90

Cross examined.—Consent to sale was given some time previous to sale in August; inside of a month. Sale on 12th August. I won't swear consent not given in month of August; consent verbal by W. H. Smith in Halifax. He left some time after giving the consent; can't say when. (Mr. Rigby objects to any evidence going to establish fraud in bill of sale, same not having been pleaded.) Father went by rail; night train. Can't give the time previous to sale. Won't swear father did not leave day before sale. Consent given in presence of Wm. H. Smith, my mother and myself. He said he was satisfied the property should be sold, and I should be paid the amount due me; don't recollect room where consent given. I had heard before consent of the writ of summons being issued. I think my father mentioned he had received a letter relative to this claim of Morrison's. I had been living at home always; heard of letter some time previous to the issue of writ. He said he had received a letter from Thompson & Graham, concerning a claim against him of Morrison; this was the first I had heard of claim. Went to Morrison in relation to claim; may have gone twice; saw Morrison; I proposed that if Morrison would wait for a certain time, a certain amount would be paid him; don't think I went to Morrison before father's receipt of letter; I may have done so; can't state date. I went to Morrison. Morrison said he would not receive less than the whole amount; that the assignment to me was not valid. I am 26 years of age; not a baker by trade. I have been admitted to the bar, and am practising. I have paid my board equivalent to cash to 11th Sept., 1880, from time I was one year old. No particular amount mentioned. My mother and sisters still living at old stand; my father is in Halifax. He was absent about five weeks. He is living at home, carrying on business of a baker. I did not carry on baking business during my father's absence; carry on business in his own name. No definite adjustment of the amount of my board. Keep cash book in my business. Can't state my income for any one year, during last five years. Have rendered services at home and practising law. Before I was admitted I was rendering services—collecting for parties while in Coombes & Thompson's office and earning remuneration from time I was 21 to my admittance. I can't say how much I received for my services, am safe in saying \$25 for one year. I was in Wm. Foster's office; had notice in paper 2nd year, had office home till last 18 months; had desk in Tremaine's office. I paid no rent for my office home; it was in my bedroom. Did not advertise; no sign-board. House, corner Agricola and Charles Streets. My office at home is about two miles from Court House. Had never been robed in Supreme Court or County Court; never had any contested suit in Supreme or County Court. Præcipe book contains memo. of all my fees received. My business did not require an elaborate set of books. I did some business on credit; did not enter it; it was small. All my income as a lawyer does not appear in the præcipe and cash book. I was managing and looking after my father's business while I was practising. I was carrying on business not over my own name; looked after the business generally. I made purchases for the business—flour, &c. I kept my father's books; he had no book keeper but me. I have attended shop, and sold bread. Bread bills and accounts made up every night. I divided my time between baker's shop and office; checked delivery of bread every night; looked after delivery and parceling of flour. Average of flour received, 6 or 7 barrels per day. When he went away he was baking up four barrels per day. No agreement as to my salary. My work, while I was studying, was an equivalent for my board. Recollect when bill of sale executed; can't say day of week when executed; I wrote bill of sale. I told my father we ought to have a settlement. I filed bill of sale away in a drawer after its execution; date written in at time of execution; filed on the day it was executed. The rest of the family knew about bill of sale. Goods not appraised at time of execution. All property, my father's property remained on premises after execution of bill of sale. I consented father should have the use of them. Father had the same property in '80 as he had in '79; horse and mare; all he had in '79. Had express and bread waggon; had harness in '79 and '80; sett harness not in bill of sale, nor four collars. I prepared schedule; my father made out list of articles for me. Goods

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sold by Shand under my instruction. I told him to sell. Bill of sale mentioned at time
 goods advertized. Shand sold everything. Deputy Sheriff would not allow goods
 to be delivered. Articles bid in at sale by persons whose names are in memo opposite 150
 articles. Shand's bookkeeper marked articles as sold. After sale Sheriff took goods away
 and he delivered them to the purchasers. Articles in bill of sale worth about \$1500.
 All property has been sold and did not realize \$1500. At time of bill of sale I estimat-
 ed goods in bill of sale at \$1500. We lumped the stuff at \$1500. My father was not
 able to pay Morrison's debt at time it was demanded; nor after the service of the writ up
 to execution; not in full. At that time he owed \$300 or \$400. He had assets \$800 in
 debts, most of which were good; required time to collect. Chipman & Davidson had a
 claim—about \$600. Debts still outstanding (good). I think I had knowledge of Morris-
 on and the other claims at the time consent was given. I saw no execution at sale.
 Sale advertised week, I think, or ten days; consent given before the advertisement; 160
 can't say how long. No recollection what time of day consent given. I cannot say
 whether goods advertised before father left. My father not pressed for the \$300 or \$400.
 I had paid them out of my own funds, \$300. \$400 paid not in bill of sale. I got no
 receipt from Chipman or Davison. I had the money in my possession. Kept money in
 the house for over a year, in a box in my bed-room. Got none of the money from my
 father. Took no obligation from my father for the money advanced, between \$200 and
 \$300; it was my earnings in different ways. No provision as yet made for my repay-
 ment. I have paid for my clothes; owe nothing in Halifax. Wages paid every Satur-
 day night; some getting \$7, \$8, \$9 a week and found themselves. Never drew anything
 from business on account of wages. No entry of my wages in any book. Can't tell 170
 when my wages commenced. Wages first mentioned at time we had settlement; about
 11th Sept., '79 subject of wages first mentioned. He was paying Falconer by instal-
 ments in Sept., 1879. He gave Falconer notes for instalments. Notes renewed from time
 to time, all paid. Several times I took notes to Falconer to be renewed. The balance
 of Falconer's claim paid in Attorney's office. Bill of sale not given about time Falconer's
 claim put in hands of lawyer, as I think. No proposition made to pay my wages in cash.
 No statement of figures of salary made; we talked the matter over and concluded to let
 my wages go against their bill for board; that is a part of my wages. No statement
 made of how much a year I was to get. I did not enter it in any book or pass receipts.
 I consented to take \$1500 for the balance due me, in full for everything. Can't state 180
 how much of \$1500 is wages. Shand's sale 23rd Augt., not 12th Augt. Can't tell how
 far we went back to compute wages, nor how much was allowed for board. Besides
 wages, rent of place went to make up \$1500. 11 years, 1 month, house and premises
 \$200 per annum. Wages not in consideration of bill of sale, it was thrown in. Never
 was expected that I should pay rent for my office. I occupied office from '75 to '80; rent
 free. I was 23 15th Sept., '79. Been a landlord for 12 years. No agreement then for
 rent. Nothing mentioned about exact amount of rent till we had settlement in Sept.,
 '79, then we made up the rent at \$200, and the bill of sale taken. Nothing said about
 rent at all till Sept., '79. The premises included dwelling house and a small building
 adjoining, and the bakery adjoining. No. of dwelling house, 108 Agricola Street. 190
 Bakery business carried on during that period of years by my father. House completed
 in '68; ground purchased in '67, moved in in '68. Bakery put up afterwards. I con-
 sidered the property only worth \$1500. There was a guardian appointed to look after
 building. There was no rent ever paid me or allowed in the settlement. My father was
 credited with nothing when settlement made. A man by name Geo. McKenzie was the
 guardian. He was a carpenter and built the house. No book shows anything for repairs.
 No repairs were put on since building. My father originally purchased all the articles in
 bill of sale. I built the store-room—Lambert built it. Lambert built the bakery also.
 Can't give the figures of either place, or the date of erection. No agreement in writing
 in regard to building store house and bakery. Bakery built first; store-room afterwards. 200
 Can't give the dates of building; within 3 years. House in building society; payments



made every month; over £790 repaid to Building Society. I paid monthly dues. I earned the money. I made all the payments to the Society myself, except in a few instances. Property put in Society in '67. Got 7 shares. I earned money to pay the dues of the Building Society. Earned it in different ways; during '67 and '68 earned some money by teaching music, writing I did. Kept no account of my earnings down to '79. About \$320 paid for lot to Sir Wm. Young. I paid Thompson \$80 deposit; balance out of Building Society; \$80 my own money I had earned. My father was not paying me wages. Besides studying law, &c., I earned and received enough money to pay the monthly dues; dues were paid between '70 and '75. Can't give names of employers who paid me money while a student. I taught music and did writing for parties. 210

Re-examined.---Deed under which property is held is tendered and received. (I mark C---it C., J. W. J.) I taught music, during time I was studying---4 or 5 at a time; gave writing lessons besides. I had requested my father previous to '79 to come to a settlement. We talked. I asked my father if he thought \$200 per annum a fair rental. He said it was. He offered me his property for the rent. Something said about board. I said my work an offset; they agreed. Occupied only one room; had received nothing on account of rent. House two story, flat roof, shop, store-room and bakery; 8 room in house. He was able to pay his liabilities when first bill of sale in '79. The transaction was bona fide. I made an offer to Morrison to give certain amount of debts for his claim against my father. Most of debts good. 220

Re-examined.---Sold everything in bill of sale, it realized \$800.

Agreement entered into that claim in writ should be reduced to \$200.

Plaintiff rests.

Judgment Book 7, page 325, Morrison vs Smith, tendered. Signature of Wilkins as Clerk admitted, and also record by default tendered, with date of filing. Rigby objects, not same judgment; 2; date of two judgments do not correspond; no amount in record; not complete; does not contain declaration. Judgment book received subject to objection.

E---Record withdrawn for the present. Judgment book marked A. Memo E tendered and received, objected to as irrelevant. 230

July 14, 1881.

WALTER NOBLE.---Clerk in office of the Clerk County Court. I produce record taken from files of Court. Memo of filing 14th Aug., '80, in handwriting of clerk. It was among the papers in the cause of Morrison vs Smith in County Court. Record tendered, **F**---marked F., objected; record incomplete; not of same judgment as that in writ; bearing different date; received subject to objection.

JAMES SHAND, Auctioneer.---Remember sale August last year; took place Monday, 23rd August. I saw the book before the sale; sale at Smith's Bakery, corner Agricola and Charles Streets. Sale at instance of the Plaintiff; Plaintiff gave me list; advertisement prepared by me. All things in list B sold. Plaintiff present. I received part of proceeds of sale; don't know whether Sheriff received balance. Gross sale \$281; paid sheriff as appears by my account sales \$154.57. Paid Sheriff by Plaintiff's authority; he told me to pay Sheriff. 240

Cross Examined.---Sheriff received from sale \$154.57. I think all the money was paid into my office, but won't swear to it. Sheriff stopped sale. Smith instructed me to go on. Sheriff levied before sale. After sale he took possession of the property he had levied on; took possession of waggons and harness, think of horses. Don't know whether Sheriff was paid any money by other parties. Sheriff received from sale \$154.57 and Plaintiff debited with it.

Re-examined.---All money paid to Sheriff was by Plaintiff's authority. Objected. 250

Re-examined.---I will swear to no specific sum paid Sheriff. Amount of sale generally paid at different times, and in small sums. Something was paid to Sheriff. Can't say how much.

Account sales book produced. Plaintiff's signature to account sale proved. Objected; tendered; received subject to objection.



EDWARD MORRISON, General Merchant.--W. H. Smith got flour from me. Sold them myself, 25th Feby., 17th March. Feby., \$205.50; March, \$42. Paid on account, Mar. 17, \$77.50; April, \$32.50; May 20, \$25; leaving balance, \$117. After 20th May, Plaintiff came and had conversation with me twice; once before suit; once after; first before letter also. Plaintiff said we need not press his father, that he would see it paid following week. I said it would be all right if he would pay following week; transactions were cash. In consequence of Plaintiff's promise I delayed suit a month. After matter was in hands of my attorney, Plaintiff came and asked if some arrangement could not be made. I told him that as he had deceived me and placed matter in Thompson & Graham's hands and would make no arrangement. Plaintiff said we could not get anything; he had bill of sale. I told him bill of sale was not his. This was the first intimation I had had bill of sale. I would not have sold goods if I known of bill of sale to son.

Cross Examined.--Have distinct recollection of conversation with Plaintiff, first conversation 1st week June; at second conversation he made me offer. He had occasionally paid us cash in his dealings. Never examined re-

Execution tendered and received--14th Aug. '80. Objected to its validity; endorsement admitted. (execution marked G.)

WALTER NOBLE recalled.--I produce writ *præcipe* in suit Morrison *vs* Smith. Bill of costs signed by M. I. Wilkins, Clerk. Amount \$18.02. Writ *præcipe*, bill costs, tendered and received. Marked L. M. N.

SHERIFF BELL.--Execution received by me 14th Aug. '80; under execution I received sum of money, \$154.50; received it between 1st and end of August; received greater part from my deputy, Hamilton; balance from Shand.

Cross Examined.--I did not see any of the articles myself; Hamilton acted for me. Received \$50 from Shand.

FREDERICK W. HAWLEY, master builder.--Did work at bakery, building baker's oven, in '69 or '70--bakery built. My work came to \$200. I did work for father, Wm. Smith. I had nothing to do with the son in the matter; no knowledge of him as the owner of the property. William Smith paid me the first instalment. I sued William Smith for the balance.

Cross Examined.--Saw George Smith about the premises; won't swear as to his age; young man; studying law. Buildings pretty extensive; covers a good deal of ground; don't know when money was paid me. Record *Hawley vs Smith* tendered and received; (objected to) filed 20th June, '77; record marked O, J. W. J.

Defendant rests.

In rebuttal.

PLAINTIFF recalled.--My money paid for work on bakery; got an advance from Building Society.

Cross Examined.--My own account of money from Building Society; received it 12th Dec., '70. I applied for this advance myself. I think I got it through my guardian. Guardian accounted and was discharged.

W. C. HAMILTON--I received \$51.07 from Shand's clerk. Mr. Tremaine proposes to ask deputy sheriff where he got the balance of the money. I think that part of Plaintiff's case.

Cross Examined.--I had conference with Plaintiff's Attorney after levy. I did not sell any goods. I did nothing with the goods except what Tremaine consented to; paper obtained from Tremaine same day or day after sale by Shand. It was after the sale. Matter in my hands.

RE-EXAMINED--Paper was not two days after sale; can't speak positively.

Plaintiff rests.

Thompson tenders rule of Court 27th April, '69, to contradict Plaintiff. Rule P tendered.

JOHN THOMPSON, sworn--Rule of Court granted in 1869, on application of James McDonald acting for guardian; initials those of late E. J.; signature to rule, hand



writing of Martyn Nutting, who acted as deputy for J. W. Nutting.
Cross Examined.—M. Nutting acted as deputy many years. Received; objected.

310

Defendant rests.

Attorney-General moves for leave to amend by adding plea, leave and license of Plaintiff.

Rigby objects. Cause tried, fraud or no fraud.

I allow the amendment.

Graham for non-suit.

Property not identified with that in bill of sale. Express waggon not covered by bill of sale. Horses not identified; bread waggon not identified.

320

2nd. No conversion proved.

ATTORNEY-GENERAL.—Fraud sustained. Bill of sale, father to son, past debt; for debt, half of which was barred by Stat. of limitations. Debt irrecoverable, based on no contract. 5th, right would be in guardian. Fraud getting Morrison to wait, and in the month registering bill of sale. No conversion. Sheriff only delivered to them what he had procured from Shand. Tremaine.

No. 3.

SMITH vs. BELL.—Action against Sheriff for conversion. The plaintiff claims title to the property under a bill of sale made by William H. Smith, the father of the Plaintiff, to George H. Smith, his son, dated 11th September, 1879, and filed 9th July, 1880, the consideration stated was \$1500. On being pressed as to what made up the \$1500 the plaintiff seemed somewhat at a loss as to whether it was given on account of his services or for rent, or both, but finally settled that it was for 11½ years rent at \$200 a year, due him by his father, which, on a settlement they had agreed to lump at \$1500. The Plaintiff claims that on the 30th day of April, 1867, he became possessed of a lot of land for which he paid \$320, and on which he erected a house and buildings with money borrowed from the Building Society, on which premises his father and family, including himself, had resided on since, and in which his father carried on the business of a baker. According to plaintiff he was 23 years of age on the 15th Sept., 1879; he must have attained his majority in 1877, and consequently at the time he became the owner of real estate must have been 10 or 11 years of age, and yet he said he paid the deposit out of his own money which he had earned, and in addition that he earned and received enough money to pay the monthly dues on the advances from the Building Society. Assuming the correctness of this story, I think that as against creditors there was no consideration for the bill of sale, and therefore as against them the bill of sale must be considered to be fraudulent. Being a minor, all his earnings belonged to his father. There is no evidence of either expressed or implied emancipation by the father, which alone could entitle the son to his subsequent earnings, so that the minor using the money that belonged to his father in the purchase of property, would give the son no right to charge the father for the use of property, in fact purchased with his own money; and we have these additional facts: that the father, son and family occupied the premises together as their common house; that the guardian of the plaintiff never appears to have demanded rent from the father in the interest of his ward; that the father in '69 or '70 contracted for the building of a bakery on the premises; that the contractor did not know the plaintiff in the matter; that the father paid the first instalment on the contract, was sued for the balance, suffered judgment by default without setting up the plea that the property belonged to his son, and lastly, that the plaintiff himself allowed two years to elapse after his coming of age before he came to a settlement with his father. The Plaintiff, indeed, says that his money paid for work on bakery; that he got the money from the Building Society in December, 1870. Even if that be so he was a minor at the time and his earnings with which he paid the dues to the Building Society would belong to his father. Under all these circumstances, I am of opinion that there could be no liability on the father, without an

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express contract, and if there was no liability that could be enforced at law, there was no foundation for a consideration that would uphold the bill of sale as against creditors. Where the parent goes to live with a child, and when a son goes to live with the parent the law will imply no promise on the part of either to pay for boarding or necessities furnished by either parent or child. The son continuing to live with his father in the same way after his majority would debar him from receiving rent for that period without an express contract to that effect. The relation between father and son are different from those with a stranger, and services rendered by a son to his father after his coming of age, and while residing with his father without any contract for compensation, furnishes no claim that can be enforced at law, while he may admire the remarkable precocity 370 of the plaintiff at an age when the aspirations of most boys do not soar beyond tops and marbles. I am bound to say that the somewhat unusual style in which the plaintiff gave his evidence, as well as the rather extraordinary statements he made, were such as to require a somewhat large amount of credulity before his testimony could be accepted in its entirety.

Exception was taken to the identification of the articles taken by Sheriff with those mentioned in bill of sale, but although not called by the same name, the statement of the Plaintiff that the articles taken by the Sheriff were included in bill of sale, coupled with the fact that the articles were sold on the premises, is sufficient *prima facie* evidence.

I think that the evidence of Hamilton, the deputy Sheriff, that he did nothing with 380 the goods except by the consent of the Plaintiff's Attorney, together with the account sales signed by Plaintiff in which he allowed himself to be debited with \$154.57 paid Sheriff Bell, affords evidence that the plaintiff consented to the Sheriff receiving that amount on account of the execution he held, *Morrison vs. Smith*.

The defendant justified the taking under an execution against William H. Smith. The record and execution were tendered. Mr. Rigby, on part of plaintiff, objected to the reception of the record on the grounds that it was incomplete in itself and differed from the docket of judgment produced. The record appears to be complete with the exception that the amount of the costs were not filled in; the bill of costs was proved, the amount of which corresponded with the amount stated in the execution. I should be loth to set 390 aside on account of a mere clerical omission and so invalidate all proceedings under it, in the face of the fact that it is open to either party to obtain a Judge's order to amend a record, and also in view of the rule H. T., 1852, which although not in force here yet shows that the English Courts do not favor trivial objections. But if the case of *Bepy vs. Windham*, 62, B. N. S., S 66, which I admit seems to conflict with some decisions in the (B) is good law. The production of the writ of execution alone, is sufficient justification for the Sheriff. The rule as laid down in 1, *Williams Saunders*, 298, N. E., is that the party to the suit justifying under final process must show the judgment in pleading as well as the writ, but that it is enough for the Sheriff to show the writ; and *Wasson on Sheriff*, p. 53, lays it down that the Sheriff is bound to execute the writ without enquiry 400 into the regularity of the proceedings whereon that writ is grounded, and that the writ is a sufficient justification to the Sheriff in an action of trespass brought against him, for the Sheriff is a ministerial officer in the execution of writs and is not to examine their legality.

Judgment for the defendant.

No. 4.

HALIFAX, SS.
(L. S.)

Victoria, by the Grace of God. &c.

To Archibald Lawson, Esquire, a Coroner for the County of Halifax, &c.:

We command you to summon Joseph Bell, of the city of Halifax, in the County of Halifax, High Sheriff of said County, the defendant herein, to appear in the County 410 Court at Halifax, within ten days after the service of this writ, at the suit of George H.

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Smith, the Plaintiff herein, who says, that the said defendant converted to his own use the plaintiff's goods, that is to say: One flat cart or flat express waggon, one riding sleigh, one riding waggon, one horse, one mare, two sets harness, four leather collars, two bread waggons and a lot of rope.

Also, that the defendant seized and took the Plaintiff's goods, that is to say: One flat cart or flat express waggon, one riding sleigh, one riding waggon, one horse, one mare, two sets harness, four leather collars, two bread waggons and a lot of rope.

And the plaintiff claims damages, two hundred dollars.

Issued this 8th day of September, A. D., 1880.

FRED. J. TREMAINE,

Attorney of Plaintiff,

(Sgd.)

M. I. WILKINS,

Clerk.

420

COUNTY COURT, HALIFAX, 1880.

SMITH *vs.* BELL.

Take notice of trial in the above cause for the first day of the next ensuing sittings at Halifax, or as soon after as this honorable Court shall be at leisure to hear the same.

Yours, &c.,

(Sgd.)

FRED. J. TREMAINE,

Attorney of Plaintiff.

To the defendant or his }
attorney. }

IN THE COUNTY COURT, HALIFAX, SS., 1880.

430

SMITH *vs.* BELL.

Notice is hereby given that if the defendant do not appear and plead within four days after the period specified in the writ for his appearance, the Plaintiff shall be at liberty to mark a default and proceed as required by law.

(Sgd.)

FRED. J. TREMAINE,

Attorney of Plaintiff.

I accept service of this writ and acknowledge to have received a copy thereof.
Halifax, Sept. 17, 1880.

(Sgd.) JOSEPH BELL.

No. 5

IN THE COUNTY COURT, 1880.

HALIFAX, SS.

440

Cause— } GEORGE H. SMITH, Plaintiff.
 vs.
 JOSEPH BELL, Defendant.

We appear for the Defendant herein.

Halifax, September 30th, 1880.

To the Plaintiff or his }
Attorney. }

THOMPSON & GRAHAM,

Defendant's Attorneys.

IN THE COUNTY COURT, 1880.

HALIFAX, SS.

450

Cause— } GEORGE H. SMITH, Plaintiff.
 vs.
 JOSEPH BELL, Defendant.

The defendant, by Thompson & Graham, his attorneys, for a first plea to the Plaintiff's declaration (first suggesting that both counts are substantially for the same cause of action) says, that he did not commit the grievances therein alleged, or any of them.

2nd. And for a second plea (suggesting as aforesaid) the defendant says that before

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the alleged conversion and trespasses, to wit: on the 14th day of August, A. D., 1880, one Edward Morrison sued out of the County Court at Halifax, a writ of execution directed to the Sheriff of the County of Halifax, whereby the Queen commanded the said Sheriff that the goods, chattels, lands or tenements of one William H. Smith, within his precinct, he should cause to be paid and satisfied unto the said Edward Morrison one hundred and thirty-seven dollars and two cents, and also to satisfy himself for his own fees, which said writ was duly endorsed with a direction to the said Sheriff to levy on the personal property of the said William H. Smith, for the said amount and his own fees, and the said writ so endorsed as aforesaid was then delivered to the defendant, as and being the Sheriff of the said County of Halifax, to be executed, and thereupon the defendant, as and being such Sheriff as aforesaid, levied upon and took the goods and chattels mentioned in the Plaintiff's declaration, the same then being the property of the said William H. Smith, and being in the precinct of the defendant as such Sheriff, as aforesaid, for the purpose of levying the money so directed to be levied as aforesaid, which is the alleged conversion and trespasses. 460

3rd. And for a third plea the defendant (suggesting as aforesaid) says: That before the alleged conversion and trespasses, to wit: on the 14th day of August, A. D., 1880, one Edward Morrison, in the County Court at Halifax by the judgment of the said Court recovered against one William H. Smith judgment for the sum of \$137 debt, and costs of suit; and thereupon the said judgment remaining in full force and unsatisfied, the said Edward Morrison sued out of said Court a writ of execution upon the said judgment against the said William H. Smith, directed to the Sheriff of the County of Halifax, whereby Her Majesty the Queen commanded the said Sheriff that of the goods, chattels, lands or tenements of the said William H. Smith, within his precinct, he should cause to be paid and satisfied unto the said Edward Morrison, the said sum of one hundred and thirty-seven dollars and two cents, and also to satisfy himself for his own fees, which said writ was endorsed with a direction to the said Sheriff to levy on the personal property of the said William H. Smith for the said amount and his own fees, and the said writ so endorsed as aforesaid, was then delivered to the defendant, as and being the Sheriff of the said County of Halifax, to be executed, whereupon the defendant, as and being such Sheriff as aforesaid, levied upon and took the goods and chattels mentioned in the plaintiff's declaration, the same being the goods and chattels of the said William H. Smith, and being in the precinct of the defendant as such Sheriff as aforesaid, for the purpose of levying the money so directed to be levied as aforesaid, which is the alleged conversion and trespass. 480

4th. And for a fourth plea the defendant (suggesting as aforesaid) says, that the said goods and chattels were not nor were any of them the plaintiff's, as alleged.

5th. And for a fifth plea the defendant (suggesting as aforesaid) says, that the plaintiff's cause of action, if any, and the amount claimed by the plaintiff in this suit, is beyond the jurisdiction of this Court.

To the Plaintiff or his }
Attorney. }

THOMPSON & GRAHAM,
Defendant's Attorneys.

Exhibit A., J. W. J.

Know all men by these presents, that I, William H. Smith, of Halifax, in the County of Halifax, master baker, in consideration of the sum of \$1500 of lawful money of Canada, to me paid by George H. Smith, of the same place, Barrister-at-Law, the receipt whereof I do hereby acknowledge, do grant, assign, transfer, and set over unto the said George H. Smith, all and singular the goods, chattels, property and effects mentioned in the Schedule hereunto annexed marked "A," to have and to hold all and singular the said goods, chattels, property and effects, and every part and parcel thereof unto him the said George H. Smith, his executors, administrators and assigns forever, so that neither I, the said William H. Smith, nor any other person for me, or in my name, any rights or 500

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interest in the said goods, chattels, property and effects, or any part or parcel thereof, shall or will claim or demand at any time or times hereafter forever, and the said William H. Smith for himself, his executors and administrators, shall and will warrant and forever defend by these presents, all and singular the said goods, chattels, property and effects, against all and every person or persons whomsoever unto him the said George H. Smith, his executors, administrators and assigns, provided that if the said William H. Smith do, well and shall truly pay unto the said George H. Smith the said sum of \$1500 with lawful interest thereon in one year from this date, then these presents to be void, otherwise to remain in full force and effect.

As witness my hand and seal at Halifax, this 11th day of September, 1879.

Signed, sealed and delivered in presence of }
Agnes G. Smith.

(Sgd.) WILLIAM H. SMITH. 520

Schedule A within referred to.

Drawing Room.—One sett of drawing-room furniture, three side tables, one centre table, one mantle glass, two window tables, nineteen pictures, one melodeon, curtains and blinds, carpet and hearth rug, ornaments, melodeon.

Sitting Room.—Carpet and hearth rug, one sofa, five chairs, one side table, one music stand, one bass violin, one sewing machine, ornaments, one stove, eighteen pictures.

Dining Room.—One extension dining table, one lounge, one settee, twelve chairs, oil cloth, one stove, one rug, nine pictures, delf of various kinds, glassware.

Hall oil cloth, slipp, one hall stove and pipe.

Bed Room No. 1.—One lounge, one bed and bedding, one bureau, one press, one book-case, two easy chairs, three chairs, wash-hand-stand, four pictures, one mantle glass, two stand glasses, one dressing table, one stove, carpet and rugs, curtains and blinds. 530

Bed Room No. 2.—One iron bedstead and bedding, one dressing glass, one table, clock, carpet and chairs, curtain and blinds.

Bed Room No. 3.—One table, flower stands, curtains and blinds, two chairs, carpet and slipp.

Bed Room No. 4.—Bedstead and bedding, one bureau, 2 dressing glasses, wash-hand-stand, three chairs, two curtains and blinds, one table, six pictures, carpet and rug.

Bed Room No. 5.—One iron bedstead, chairs, wash-hand-stand, carpet and rug. 540

Hall carpet and slipp, carpet on stairs, and linen.

Kitchen.—One kitchen range, two tables, two closets, eight chairs and rug, three setts dishes, pots and kettles of different kinds.

One waggon, one sleigh, three bakers sleighs, two bakers waggons, one flat cart, two horses, together with all and singular the goods and effects in the bakery, consisting of two troughs, bake pans of different kinds, one stove, one chest of tools, &c., and such other property and effects of every kind, nature and description whatsoever, and where-soever belonging to the said William H. Smith.

Witness—Agnes T. Smith.

Endorsed 9th July, 1880, 11 30 entered and filed.

WILLIAM H. SMITH.

Exhibit B, J. W. J.

			550
1 Horse Harry (Gentles)	Hamilton, J. B.,		\$35.00
1 do Mare (McCarthy)	do J. B.,		37.00
1 Express Waggon (Leahy)	do J. B.,		31.50
1 Bread Waggon (Moir & Co.)	do J. B.,		30.00
4 Collars (Adams)	do J. B.,		2.80
1 lot Rope (Mont)	do J. B.,		40
1 Sett Express Harness (Sullivan)	do J. B.,		7.50
			\$144.20

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Bennetty Hamilton J. B., *Brought forward*

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Amount paid Sheriff \$154.50.

Goods of George R. Smith } Monday,
levied on by Sheriff. } Aug. 23, 1880.

Exhibit C., J. W. J.

Deed, William Young and wife, Charles Young and Thomas H. Brooking devisees of George R. Young, to George H. Smith. 570
Date, 30th April, 1867.

Consideration \$320.00.

Description. All the southern moiety or half part of that certain lot, piece or parcel of land, in Young's division of the City of Halifax, marked and numbered on a plan of said division prepared by John B. Young, Civil Engineer, dated Oct. 1st, 1863, and which plan is to be recorded in the office of Registry of Deeds at Halifax, as lot 85, commencing on the west side line of Agricola Street, at a point distant fifty-four feet from and to the north of the angle formed by the intersection of said Agricola Street with Charles Street, running thence westerly on a line parallel with said Charles Street, 94 feet, more or less, or to lot 88; thence southerly by east line of said lot 88, 53 feet more or less, to said Charles Street; thence easterly by said Charles Street 94 feet, more or less, or to Agricola Street, aforesaid; thence northerly by said Agricola Street fifty-four feet, to the place of beginning. 580

Registered 18th June, 1867, Book 133, page 406.

"A."

Entries in the County Court, August, 1880.

Debt,	\$119.00	Cause—	{ EDWARD MORRISON. Thompson and Graham. vs. WILLIAM H. SMITH.
	18.02		

\$137.02

Says nothing between the said Edward Morrison and the said William H. Smith, for one hundred and nineteen dollars. 590

Recd 14th Aug., '80

Therefore, it is considered that the said Edward Morrison recover against the said William H. Smith the said sum of one hundred and nineteen dollars, together with eighteen dollars and two cents for

Ex. 14th Aug., '80. his costs of suit.

M. I. WILKINS, Clerk.

14th August, 1880.

Judgment Book 7, page 325.

Exhibit E., J. W. J.

It is agreed that no objection will be taken to the delivery by Joseph Bell, Sheriff, to parties who purchased same at Shand's auction, 23rd August, of goods of George H. Smith, levied on under execution against William H. Smith at s. Edward Morrison, or to the sale by him of said goods without special advertisement by him. 600

For GEORGE H. SMITH,
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Exhibit F., J. W. J.

Halifax, SS.

In the County Court,

On the 28th day of July, A. D., 1880.

To Wit.--Edward Morrison, trading and doing business under the name, style and firm of E. Morrison & Co., by Thompson & Graham his Attorneys, sued out a Writ of Summons against William H. Smith, of the City and County of Halifax, Baker, with the particulars annexed, as follows:

1880					610
Feb'y. 25.	To 30 barrels Perth Flour @ \$6.85,			\$205.50	
Mar. 17.	" 6 " Shoofly " 7.00,			42.00	
				\$247.50	
1880.		Cr.			
Mar. 17.	By Cash \$73.00, April 21, Cash \$32.50, May 20, Cash \$25.00			130.50	
				\$117.00	
				2.00	620
				\$119.00	
				\$119.00	

To amount due under Common Counts,

The Plaintiff also claims interest on \$117.00 from the date of the Writ until Judgment. And the said William H. Smith hath not appeared thereto. Therefore it is considered that the said Edward Morrison recover against the said William H. Smith one hundred and nineteen dollars, together with \$ for Costs of Suit.

THOMPSON & GRAHAM,
Attorneys of Plaintiff. }

630

Filed 14th August, 1880.

Exhibit G., J. W. J.

HALIFAX, SS. *VICTORIA, by the grace of GOD, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the faith, and of the United Church of England and Ireland, on Earth the Supreme Head.*

To the Sheriff of our County of Halifax, or to any other of our Sheriff's:

[SEAL.]

Whereas Edward Morrison by consideration of our Justices of our County Court, at Halifax, on the 14th day of August recovered Judgment against William H. Smith for the sum of one hundred and nineteen dollars debt or damage, and the sum of eighteen dollars and two cents costs of suit, as appears to us of Record, whereof execution remains to be done. We command you therefore, that of the Goods, Chattels, Lands, or Tenements of the said William H. Smith within your precinct you cause to be paid and satisfied unto the said Edward Morrison at the value thereof in money, the aforesaid sum being one hundred and thirty-seven dollars and two cents, and thereof also to satisfy yourself for your own fees; and for want of Goods, Chattels, Lands, or Tenements of the said William H. Smith to be by him shown unto you, or found within your precinct, to the acceptance of the said Edward Morrison to satisfy the sums aforesaid, we command you to take the body of the said William H. Smith and commit unto our

Debt, \$119.00
Costs, 18.02

Ex: \$137.02
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\$138.62

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Gaol in Halifax and detain in your custody, within four said Gaol until he pay the full sums above mentioned, with your fees, or that he be discharged by the said Edward Morrison the Creditor or otherwise, according to law. Whereof fail not, and make due return of this Writ unto our said County Court at Halifax, within sixty days from the date hereof.

Issued this 14th day of August, A. D., 1880.
THOMPSON & GRAHAM,
Attorneys of Plaintiff. }

M. I. WILKINS,
Clerk. 660

[ENDORSEMENT]

G. J. W. J.

7897. L. 7, 325.

County Court, Halifax, SS.

Morrison }
vs. } Execution.
Smith. }

MR. SHERIFF,—Please levy on the personal property of the within named William H. Smith for the within amount and your own fees, and for want thereof take his body. 670
THOMPSON & GRAHAM, Attorneys of Plaintiff.

Recd. 14th August, 1880.

Exhibit J., J. W. J.

Account sales, Bakers effects, sold by James Shand, for acct. of Geo. H. Smith, Esq.

Gross amount of sale		\$281.52	
CHARGES.			
To commission 5 per cent,	\$14.08		
“ Advertising, 2 sq., 5 ins., 2 pa.	8.		
“ Labor at sale and delivery,	2	24.08	
		<u>\$257.44</u>	680
DR.			
To paid Sheriff's bill,	\$154.57		
“ Teaming, McLean,	1.00	155.57	
		<u>\$101.87</u>	

E. & O. E.
Aug. 30, 1880.

JAMES SHAND.

Endorsed received payment,

GEO. H. SMITH.

Aug. 30, 1880.

No. 7897. Exhibit L. J. W. J.

690

HALIFAX, SS. VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, etc.

To the Sheriff of Halifax or any other of our Sheriffs:

[L. S.]

We command you to Summon William H. Smith, of the City and County of Halifax, Baker, herein after called the defendant, to appear in the County Court, at Halifax, within ten days after the service of this Writ, at the suit of Edward Morrison, trading and doing business under the name, style and firm of E. Morrison & Co., hereinafter called the Plaintiff, who says that the said Defendant is indebted to him for money payable by the said Defendant to the said Plaintiff. For goods sold and delivered by the Plaintiff to the Defendant at his request. And for work done and materials provided by the Plaintiff for the Defendant at

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his request. And for money received by the Defendant for the use of the Plaintiff. And for money found to be due from the Defendant to the Plaintiff, on an Account stated between them. And for interest upon money of the Plaintiff held by the Defendant and forborne to him by the Plaintiff for a long time now elapsed.

And he claims Two Hundred Dollars.

Issued this 28th day of July, A. D., 1880.

THOMPSON & GRAHAM,
Attorneys of Plaintiff. }

M. I. WILKINS,
Clerk. 710

1880.

The following are the particulars of the Plaintiff's claim:—

Feby. 25.	To 30 bbls. "Perth" Flour, @ \$6.85,	\$205.50	
Mar. 17.	" 6 " "Shoofly" " " 7.00.	42.00	
		\$247.50	
1880.	Cr.		
Mar. 17.	By Cash \$73, April 21, Cash \$32, Cash \$25,	130.50	
		117.00	720
		2.00	
		\$119.00	
		\$119.00	

To amount due under Common Counts,
Default 14 April, 1880.

SHERIFF'S RETURN.

I served a copy of this Writ on the within named defendant on the 28th day of July, 1880.

JOSEPH BELL, Sheriff. 730

Exhibit M., J. W. J.

HALIFAX, SS.

IN THE COUNTY COURT, 1880.

Præcipe for summons for Edward Morrison trading and doing business under the name, style and firm of E. Morrison & Co., against William H. Smith, of the City and County of Halifax, Baker.

Writ issued 27th day of July, A. D., 1880.

Returnable ten days.

Particulars \$119.00.

Claim 200.

THOMPSON & GRAHAM, Plaintiff's Attorneys. 740

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IN COUNTY COURT.

MORRISON

vs.

SMITH.

Plaintiff's Costs on default.

Retainer and letter,		\$3.00	
Warrant and p'pe.,		.60	
50 Writ and Copies,		2.00	750
50 Declar. and Copies,		2.00	
25 Notice to appear and Copies,		1.25	
25 " of trial and "		1.25	
20 Particulars and Copies,		.80	
Brief and Copy,		1.50	
Term fee,		1.00	
Record and Eng.		1.00	
Bill of Costs,		1.00	
		\$15.40	760
Sheriff's fees,	90		
Prothonotary's fees,	2.50		
Jury fee,	25		
Library Stamp,	25		
Crier,	27		
Postage,	25		
		4.32	
		\$19.72	
		1.70	
			770
		\$18.02	

Allowed.

M. I. WILKINS, Clerk.

Exhibit O.

(ABSTRACT.)

Record of a Judgment in the Supreme Court of Nova Scotia. Suit, Frederick W. Horley, Plaintiff, *versus* William H. Smith, Baker, Defendant. Writ issued 2nd March, 1872. Action on the common counts. Pleas—1st, never indebted; 2nd, payment; 3rd, that Plaintiff agreed with Defendant to construct an oven for Defendant for \$200, to be built of the best tile, and best brick, and flue to be carried to proper height for draft; that Plaintiff also agreed to furnish a boiler to be built in at the side of the oven and to do all necessary iron work in connection therewith, and to remove any unsatisfactory work or materials. that the oven and work were unsatisfactory and useless, and Plaintiff was notified to remove and rebuild but had neglected and refused to do so; that Plaintiff did not perform his agreement and used bad workmanship and materials which rendered the work useless and put Defendant to expense. 4th, plea of set-off. Order to amend by making the suit a Declaration cause. Rule of reference, 4th November, 1873, to L. W. DesBarres. Award by DesBarres, 15th December, 1873, in favor of Plaintiff for \$75.05. Bule *nisi* to set aside award and rule discharging such rule *nisi*.

IN COUNTY COURT

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IN THE SUPREME COURT, IN EQUITY, 1869.**HALIFAX, SS.**

In the matter of the Estate of George H. Smith.

On reading the rule *nisi* granted herein to allow the account rendered by George McKenzie, the Trustee in the said Estate, and to discharge the said George McKenzie from the trust in the said estate and the report of the Master of this Court, made on the said account of the Trustee,—It is ordered that the said account as reported and amended by the said Master be allowed and passed, and that the said George McKenzie be discharged from his trust in the said Estate. It is also ordered that the balance of twenty-eight dollars and fifty-two cents, reported by the Master as due to the said George McKenzie, be paid to him out of the estate of the said George H. Smith, together with his costs herein to be taxed. 800

Dated 25th April, A. D., 1869.

BY THE COURT.

J. W. NUTTING,
Prothonotary.